VHF or UHF channel upon which it can operate without causing objectionable interference to full service television stations, other low power stations, television translators or land mobile stations. Television translator applications are filed in the same manner as LPTV applications, see 47 C.F.R. § 73.3572(g), while FM translator applications may be filed at any time and must propose facilities that protect all previously authorized FM stations (full service or other translators) from harmful interference. See 47 C.F.R. § 74.1233.

61. To facilitate the orderly filing of broadcast and secondary broadcast service applications, and the determination of mutually exclusive groups of these applications for auction purposes, we propose to establish a specific time period or auction window during which all applicants seeking to participate in an auction must file their applications. Such windows, as discussed in greater detail below, will be announced by future public notices issued after the release date of the rules adopted in this proceeding. As an interim measure, we shall, effective upon the release of this NPRM, impose a temporary freeze on the filing of further applications in all commercial broadcast and secondary broadcast services, pursuant to our existing procedures.[35] During the freeze, we will continue to accept and process petitions for rulemaking requesting the allotment of new FM channels to the FM Table of Allotments at any time, and applicants will be able to apply for any such allotments during subsequently announced FM auction filing windows. The freeze will apply to applications for new stations and for major changes in existing facilities but not to minor modification applications. It will also not affect the filing of applications for new stations or for major changes in existing facilities in the reserved portion of the FM broadcasting band (Channels 200-220). Additionally, we will exempt from the freeze any application timely filed in response to an outstanding AM (or FM translator) cut-off list or to an open FM window, but we will not issue any new cut-off lists or open any new filing windows.

62. This interim measure will avoid the unnecessary and wasteful expenditure of resources required to file the long-form applications. As discussed in greater detail below, the primary purpose of applications filed during an auction window is to determine mutual exclusivity for participation in an auction. Under our proposed auction procedures, prior to the auction applicants will only be required to file a short-form application (FCC Form 175), supplemented in instances involving non-table services by the engineering data contained in either an FCC Form 301 (application for AM, FM or television construction permit), FCC Form 346 (application to construct LPTV station or television translator), or FCC Form 349 (application to construct FM translator). Only winning bidders will be required to file long-form applications. Moreover, as section 309(j) mandates auctions in these services, no mutually exclusive applications can be resolved during the freeze. Thus, instead of incurring

[35]See Kessler v. FCC, 326 F.2d 673, 687-88 (D.C. Cir. 1963) (freeze on AM applications pending rulemaking to consider new AM rules was not arbitrary and capricious and did not require notice and comment, but applications that are mutually exclusive with applications filed before the freeze and that are timely except for the freeze must be accepted).

the substantially greater cost of filing long-form applications during the pendency of this rulemaking that will be reviewed only if an applicant is the winning bidder, applicants will have the opportunity to file less burdensome short-form applications in response to a public notice issued after the release date of any auction rules adopted in this proceeding. In this manner, the temporary freeze makes the transition from our current procedural rules to a revised auction-oriented approach less burdensome for applicants as well as for the Commission.

63. A public notice will announce the auction and the window for filing short-form applications in order to participate in a broadcast service or secondary broadcast service auction. It will specify when the filing window will open, and how long it will remain open. The Commission anticipates issuing any such public notice announcing a filing window no less than 30 days prior to the opening of the window, and that the filing window will remain open for at least five business days. We request comment on the number of days filing windows should remain open, and on the number of days notice that the Commission should give prior to opening any window.

64. We also seek comment on our proposal to have a combined filing window rather than separate filing windows for each type of broadcast or secondary broadcast service. In proposing a combined filing window, we recognize that while the opening of a combined window for the filing of applications for the various broadcast and secondary broadcast services at the same time may be more efficient, there may be advantages to opening separate windows for each service at separate times to accommodate circumstances unique to each service. For example, an LPTV auction may not be held until consideration of a pending Community Broadcasting Association request that "primary" status be awarded to licensees who comply with certain requirements. We request comment on these disparate options. Except for the FM service, where new station applicants may only file for vacant FM channels reflected in the Commission's Table of Allotments, we currently do not anticipate limiting filing windows on a geographic basis, such as opening windows only for particular states or regions. We would expect to open filing windows for the broadcast and secondary broadcast services as often as our resources allow, taking into consideration the Commission's need to maintain orderly processing procedures and the frequency with which auctions of mutually exclusive broadcast applications may be efficiently conducted. We note the possibility of handling certain auctions of construction permits for commercial broadcast facilities in the Commission's proposed quarterly auctions process, see Part 1 Order, 12 FCC Rcd at 5691-92 ¶ 7, particularly if the number of construction permits at stake is small, or their estimated value is low. It would appear, for example, that applications to modify existing broadcast facilities might be particularly suitable for such treatment if we ultimately conclude that mutual exclusivity among such applications should be resolved by competitive bidding. We emphasize, however, that we make no commitment that auctionable broadcast licenses will be included every time the Commission conducts a quarterly auction.

65. In response to a public notice announcing a window for the filing of AM, FM, television, LPTV, and/or television or FM translator applications for new stations (and possibly applications for major changes in existing facilities), we propose requiring applicants to file a short-form application (FCC Form 175), along with any engineering data necessary to determine mutual exclusivity in a particular service.[36] FM applicants would apply by submitting an FCC Form 175 application for any vacant allotment specified in the Commission's public notice announcing the opening of a filing window. Applications specifying the same vacant FM allotment(s) would be mutually exclusive, and no supplemental engineering data would be necessary to make this determination. As the filing of applications would be limited to the window filing period, the current ability to tender new FM applications on a "first come/first serve" basis after a window closes would be terminated.

66. Applicants for AM stations, LPTV stations, and television and FM translators would file short-form applications specifying a frequency or channel upon which the applicant could operate in accordance with the Commission's existing interference standards for these services, which we do not propose to alter in any way.[37] To determine which AM, LPTV, and television and FM translator applications are mutually exclusive for auction purposes, we expect to require applicants for these services to file, in addition to their short-form applications, the engineering data contained in the pertinent FCC Form (i.e., FCC Form 301, FCC Form 346 or FCC Form 349). Similarly, if we ultimately decide to use auctions to resolve mutually exclusive applications to make major changes in existing facilities, in those rare instances in which analog television licensees file such applications (such as a change in the community of license), we propose to require that applicants file both an FCC Form 175 and the engineering data contained in an FCC Form 301.

67. We anticipate that all broadcast and secondary broadcast applicants would file their FCC Form 175 applications electronically, and we request comment on the burden such an electronic filing requirement would place on applicants for the secondary broadcast services. See Part 1 NPRM, supra, ¶ 11, 12 FCC Rcd at 5714 ¶ 46 (proposing to require that all short-form applications be filed electronically beginning January 1, 1998). When

[36] Applicants will not be permitted to file applications for new analog television stations in these windows because, in the Sixth Report and Order concerning advanced television, the Commission essentially ended the licensing of new analog television stations. Specifically, the Commission determined to treat the existing vacant analog television allotments in the Table of Allotments that were not the subject of pending applications as deleted, and stated that we would not accept new applications for new stations on those allotments. With regard to pending applications and petitions for rule making requesting new television allotments, we determined to maintain and protect those vacant analog allotments that were the subject of such pending applications. Sixth Report and Order in MM Docket No. 87-268, FCC 97-115 at ¶ 112 (April 21, 1997).

[37] *See, e.g.*, 47 C.F.R. §§ 73.37, 73.182 and 73.187 (AM interference rules); 47 C.F.R. §§ 74.703, 74.705, 74.707 and 74.709 (LPTV and television translator interference rules); and 47 C.F.R. §§ 74.1203 and 74.1204 (FM translator interference rules).

necessary to be filed, we expect the engineering data contained in the FCC Form 301, FCC Form 346 or FCC Form 349 would be submitted in accordance with Section 73.3512 of the Commission's rules. We request comment on our proposal to require applicants filing during an auction window to submit FCC Form 175 applications, supplemented when necessary by appropriate engineering information. In particular, commenters should address whether this proposal requires applicants to file an appropriate, but not a burdensome, amount of information prior to an auction.

68. *Pre-auction Processing*. After the receipt of short-form applications in response to an announced filing window, the Commission would determine the mutually exclusive groups of applications for auction purposes. We tentatively conclude that, in cases where applicants have submitted engineering data in addition to the FCC Form 175, the Commission should not engage in pre-acceptance processing of such data, beyond the review necessary to determine mutual exclusivity for an auction. Under this approach, prior to any auction, we would examine the engineering data submitted by applicants *only* to the extent necessary to determine which applications are mutually exclusive with each other. Because, as described above, applicants for new FM stations must file for available, vacant allotments, as reflected on the Table of Allotments, additional engineering data is not necessary to determine mutual exclusivity, and the question of a pre-auction engineering review of the short-form application does not arise.

69. Under this approach, the Commission would not make determinations as to the ultimate acceptability or grantability of the applicants' technical proposals prior to the auction. For example, we could defer until after the auction questions as to whether an LPTV applicant's proposal involved coordination problems with Mexico or Canada, or interference problems with existing full power stations, land mobile stations, or other LPTV stations or television translators. The advantage of reviewing applications prior to an auction only to the extent necessary to determine mutual exclusivity is that it would save considerable Commission resources. Nonetheless, this approach has a significant downside in that it may result in applicants, whose technical proposals are unacceptable, participating and perhaps prevailing in an auction. Additionally, prospective bidders should be aware that a winning bidder whose complete long-form application (FCC Form 301, FCC Form 346 or FCC Form 349) cannot ultimately be granted for either legal or technical reasons may be subject to default payments under the Commission's general competitive bidding rules. See infra ¶ 74. See also 47 C.F.R. §§ 1.2104(g); 1.2107(b); 1.2109(c). Finally, our general competitive bidding rules provide that if the winning bidder is ultimately found to be unqualified to be a licensee, we would conduct another auction for the license at issue and this would require that we afford new parties an opportunity to file applications for the license. See 47 C.F.R. § 1.2109(c).

70. To avoid the possible inefficiencies that may result if we permit applicants with potentially unacceptable technical proposals to participate in an auction, we seek comment on

an alternate approach whereby the Commission prior to an auction would engage in pre-acceptance processing of submitted engineering data. The purpose of such pre-auction review would be to identify any technical problems (primarily interference and international coordination) that could not be resolved by amendment. Under this approach, the Commission would return as unacceptable those applications containing unresolvable technical problems. We recognize that this approach, could slow the auction process, particularly since an applicant could seek reconsideration of the Commission's decision to return its application as unacceptable prior to an auction. Rather than delay the start of an auction pending decisions in any petitions for reconsideration of returned applications, we could proceed with the auction, with the understanding that the rights of winning bidders would be subject to the outcome of any such pending petitions. We seek comment on whether it would be preferable to examine engineering data prior to an auction only to determine mutual exclusivity, or to engage in a more extensive pre-auction review of the engineering data submitted by auction applicants, primarily in the AM, LPTV, and television and FM translator services.

71. Following the determination of mutual exclusivity among the applications filed in response to a window, we anticipate issuing public notices identifying the applicants in each group of mutually exclusive applications who would be eligible to bid on construction permits for the allotments or channels identified in their short-form applications. Such public notices would provide more detail on the time, place and method of competitive bidding to be used, as well as applicable bid submission and payment procedures, the deadline for submitting the upfront payments, the amounts of the upfront payments and any minimum opening bid or reserve price, all pursuant to the auction rules then in place. Of course, any application submitted in response to an announced window that is not mutually exclusive with any other application in the same service would not be subject to auction. The Commission anticipates that such non-mutually exclusive applications would be identified by public notice (possibly in the same public notice announcing the mutually exclusive groups), and a date established in the public notice for the filing of complete long-form applications (FCC Form 301, FCC Form 346 or FCC Form 349) by these non-mutually exclusive applicants. We request comment on requiring that non-mutually exclusive applicants file their long-form applications within 30 days after the date of any such public notice. We would then proceed to review the long-form applications.

72. *Minor Modification Applications and Other Issues*. Although, under our window filing approach, applications for new stations in the broadcast and secondary broadcast services, and possibly applications for major changes in existing facilities, must be filed in announced windows, we propose to allow licensees to file FCC Form 301, FCC Form 346 or FCC Form 349 applications for minor modifications at any time, in accordance with our existing filing procedures. In rare instances, under our current rules, two or more FM, AM,

television or LPTV minor modification applications can be mutually exclusive.[38] We seek comment on how to resolve situations where the licensees filing any such mutually exclusive minor modification applications cannot agree to resolve the mutual exclusivity. Depending on what we ultimately conclude regarding the auctionability of mutually exclusive modification applications generally, we might possibly consider including mutually exclusive FCC Form 301, FCC Form 346 or FCC Form 349 applications proposing minor modifications in existing facilities, which are filed outside an announced window, in the auction held following the Commission's next general filing window, or alternatively, in the Commission's next quarterly auction. We request comment on this issue.

73. *Anti-Collusion and Bid Withdrawal Rules.* Commenters may also address whether it is appropriate to apply other provisions of the Commission's general competitive bidding rules to broadcast auctions. They should focus on the anti-collusion rule, which provides that, after the short-form filing deadline, applicants may generally not discuss the substance of their bids or bidding strategies with other bidders that have applied to bid on the same licenses or permits. *See* 47 C.F.R. § 1.2105(c).[39] However, communications among bidders concerning matters wholly unrelated to the auction, such as discussions between a broadcast affiliate and its network programming supplier on issues unrelated to the auction in which they are competing bidders, would not violate the anti-collusion rule. We do believe that the terms of the anti-collusion rule will prohibit applicants who file mutually exclusive short-form applications in response to future broadcast auction windows from procuring the removal of

[38] With regard to LPTV and television translators, applications by two or more licensees seeking displacement relief under 47 C.F.R. § 73.3572(a)(2) are the only type of minor modifications that can create mutual exclusivity.

[39] We note that this prohibition also prevents the transfer of indirect information which affects, or could affect, bids or bidding strategy, and we ask for comment on the effect of the rule. As we have previously explained, the anti-collusion rules may affect the way in which auction participants conduct their routine business during an auction by placing limitations upon an auction participant's ability to pursue business opportunities in the areas in which it has applied to bid for licenses. See Public Notice, Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders, DA 96-1460 (Aug. 28, 1996) (*"August 28 Public Notice"*); Public Notice, FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, DA 96-929 (June 10, 1996) (*"June 10 Public Notice"*); Public Notice, Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, DA 95-2244 (Oct. 26, 1995); News Release, Staff Adopts Order and Releases Letters Clarifying Issues on Broadband PCS Auctions, (Oct. 26, 1994); Letter from William E. Kennard, FCC, to Gary M. Epstein & James H. Barker, Oct. 25, 1994; Letter from Rosalind K. Allen, FCC, to R. Michael Senkowski, Dec. 1, 1994; Letter from Rosalind K. Allen, FCC, to Leonard J. Kennedy, Dec. 14, 1994; Letter from Kathleen O'Brien Ham, FCC, to Mark Grady, Apr. 16, 1996; Letter from Kathleen O'Brien Ham, FCC, to David L. Nace, DA 96-1566, Sept. 17, 1996. See also Mercury PCS II, L.L.C., DA 97-388 (released Oct. 28, 1997) (Commission found that a participant in the broadband PCS D, E and F block auction was apparently liable for a forfeiture in the amount of $650,000 by placing trailing numbers at the end of its bids that disclosed its bidding strategy in a reflexive manner that specifically invited collusive behavior).

competing applications by means of settlement agreements. We ask for comment on the effect of the anti-collusion rule in the broadcast context.

74. Commenters may additionally want to discuss the advisability in the broadcast context of applying the Commission's general policy of imposing bid withdrawal and default payment requirements in instances where high bids are withdrawn during the course of an auction, where winning bids are withdrawn after an auction has closed, and where winning bidders fail to submit their long-form applications or pay their winning bids. See 47 C.F.R. §§ 1.2104(g); 1.2109. Commenters proposing that these or other aspects of our Part 1 auction rules, which we have successfully employed in numerous previous auctions, should not apply here should clearly explain why such generally applicable auction rules are not appropriate in the broadcast context. Commenters should also address any proposed amendments to the Commission's general competitive bidding procedures, see Part 1 NPRM, supra, ¶11, that they believe would warrant modification in auctions of construction permits to provide broadcast service or secondary broadcast service.

75. *Post-Auction Application Procedures*. We propose to follow, as closely as possible, the Commission's general post-auction application procedures and payment requirements set forth in Subpart Q of Part 1 of the Commission's rules, as amended, in broadcast and secondary broadcast service auctions. We anticipate applying the Commission's established procedures in the manner described below, and accordingly seek comment on applying these procedures to future auctions of mutually exclusive broadcast applications.

76. Following the close of an auction the Commission will issue a public notice announcing the close of the auction and identifying the winning bidders. Within 10 business days of this public notice, we expect to require each winning bidder to submit a down payment, supplementing its upfront payment, sufficient to bring its total deposit with the Commission up to 20% of its winning bid(s). In past auctions, the Commission has generally required such a 20% down payment. See 47 C.F.R. § 1.2107. If commenters believe some other amount is more appropriate as a down payment, they should provide clear reasons to justify their position. Within 30 business days of this same public notice, we anticipate requiring each winning bidder to file a complete FCC Form 301, FCC Form 346 or FCC Form 349 long-form application for each construction permit for which it was the high bidder. We request comment on whether 30 days is a sufficient period of time for broadcast auction winners to prepare their long-form applications.

77. The winning bidders' long-form applications would then be placed on public notice, thereby triggering the filing window for petitions to deny. In Section 3008 of the 1997 Balanced Budget Act, Congress provided that the Commission may specify an abbreviated period of "no less than 5 days following issuance" of a public notice for the filing of petitions to deny against the applications submitted by auction winners. We therefore request comment on the appropriateness of establishing a period, such as 5 days, for the filing

of petitions to deny against each auction winner's long-form application. If the Commission denies or dismisses all petitions to deny (if any are filed) and is otherwise satisfied that the applicant is qualified, we would issue a public notice announcing that the construction permit is ready to be granted. We anticipate requiring the auction winner to then make full payment of the balance of its winning bid within 10 business days, and the Commission would issue the construction permit to the auction winner within 10 business days after receiving full payment. We seek comment on these long-form application, petition to deny and payment procedures.

78. We also seek comment on whether any existing service-specific rules relating to processing and reviewing FCC Form 301, FCC Form 346 or FCC Form 349 applications should be modified to facilitate the auction process. In particular, commenters may wish to discuss which existing Commission procedures relating to the processing of applications for broadcast or secondary broadcast construction permits may need to be modified to enable winning bidders to resolve questions relating to their technical proposals or other matters contained in their long-forms. We specifically propose to amend our application processing and review procedures to, *inter alia,* relax the limitations on the number, and the timing of filing, of curative amendments contained in such rules as 47 C.F.R. Section 73.3522 (amendment of applications) and Section 73.3564 (acceptance of applications). We note that such changes would affect the rules for amending applications in all auctionable broadcast services, and that it would eliminate the tenderability criteria and two-tiered minimum filing requirements currently in effect for new full service FM applications.[40] In relaxing the standards for filing amendments, however, we propose that deficiencies in long-form applications filed by winning bidders would not be curable by major amendment, and at this time, we do not anticipate modifying the current definition of "major amendment" for the various broadcast services.[41] Thus, we propose to require that major amendments to the long-form application, because they significantly change the long-form application as originally filed, must be filed in accordance with the window filing procedures discussed above. Winning bidders in all broadcast and secondary broadcast services who file long-form applications with waiver requests that cannot be granted, and who cannot provide timely alternate proposals consistent with our rules, will be dismissed.

79. With regard to the long-form applications filed by either winning bidders or non-mutually exclusive applicants for new FM stations specifically, we note that new instances of mutual exclusivity may arise if an applicant's long-form application proposes a site other than one protected pursuant to the Table of Allotments. To prevent such occurrences, we propose

[40] See 47 C.F.R. §§ 73.3525, 73.3564. See generally Amendment of Part 73 of the Commission's Rules to Modify Processing Procedures for Commercial FM Broadcast Applications, 7 FCC Rcd 5074 (1992).

[41] See 47 C.F.R. § 73.3571 (AM radio); 47 C.F.R. § 73.3572 (television, LPTV and television translators); and 47 C.F.R. § 73.3573 (FM).

that such applicants should not be allowed to file FM long-form applications in conflict with any previously-filed commercial or noncommercial applications. Long-form applications would be entitled to "cut-off" protection from subsequently filed applications and rulemaking petitions. Thus, FM long-form applications would be protected as of the date they are filed with the Commission, just as minor modification applications are currently protected. Similarly, a commercial minor modification application could be mutually exclusive with a new or modification application in the FM educational reserved band. We propose that any commercial FM modification application must protect any previously or simultaneously filed application in the reserved band, in order to eliminate the possibility of creating a cross-band mutually exclusive situation.

80. We also seek comment on how the auction process for FM translators specifically would work in relation to 47 C.F.R. § 74.1204(f). This rule currently allows FM broadcasters the right to object to proposed translators that would be likely to interfere with the reception of a regularly received existing service, even if there is no prohibited contour overlap. Application of this rule could result in the dismissal of long-form applications filed by FM translator auction winners, if an objecting party provides evidence of such interference with a regularly received service. Furthermore, an FM translator construction permit is currently subject to cancellation if it is determined that such facility causes objectionable interference or circumstances in the area served are so altered as to have prohibited grant of the application had such circumstances existed at the time of its filing. In addition, we seek comment on how the auction process for FM translators would work in relation to these specific provisions of 47 C.F.R. §§ 74.1203(a) & (b) and 74.1232(h).

81. We finally request comment on whether any existing requirements contained in the FCC Form 301, FCC Form 346 and FCC Form 349 applications may be eliminated. Specifically, we are proposing to eliminate the requirement that applicants certify they have a "reasonable assurance" that the specific sites proposed as the location of their transmitting antennas will be available.[42] We request comment on our proposal to delete the "reasonable assurance" of site certification from the FCC Forms 301, 346 and 349, and to rely on strict enforcement of our existing construction requirements to ensure that winning bidders in future broadcast auctions construct their facilities in a timely manner. See 47 C.F.R. § 73.3598 (establishing two-year construction period for television stations and 18-month construction period for AM, FM and LPTV stations, as well as television and FM translators). Given the relatively brief period of time that winning bidders will have to prepare and file their complete long-form applications following the close of future broadcast auctions, we believe that elimination of the "reasonable assurance" of site requirement may be appropriate.

[42] In other auctionable services, such as the Multipoint Distribution Service, we have eliminated such requirements relating to the transmitter sites proposed by auction winners, and relied instead upon the enforcement of construction build-out requirements to ensure that auction winners construct their facilities and begin providing service to the public in a timely manner. *See* 47 C.F.R. §§ 21.15, 21.930.

82. We believe the processing approach proposed above will promote the orderly and consistent filing of applications for different services and will facilitate the determination of mutually exclusive groups of applications for auction purposes. Accordingly, we seek comment on all aspects of our proposed approach. Commenters should feel free to discuss any other issues raised by our proposal to modify the existing application submission procedures for broadcast and secondary broadcast services, including the existing service-specific application filing procedures that may need to be modified or eliminated to implement our proposed uniform window filing approach. If commenters believe that some filing procedure other than the window filing approach we have proposed would better facilitate the auction process and serve the Commission's other goals, they should describe in detail any such alternative, and the comparative advantages of their proposal over the Commission's approach.

4. Designated Entities.

83. Section 309(j)(4)(D) of the Act, which was not amended by the Balanced Budget Act of 1997, provides that, in prescribing rules for a competitive bidding system, the Commission must ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services and for this purpose it shall consider the use of tax certificates, bidding credits and other procedures. Pursuant to the Commission's obligation under 309(j)(4)(A) to "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods," the Commission has adopted a number of measures designed to ensure participation by small businesses, including those owned by women and minorities.[43] These include entrepreneur blocks, bidding credits, reduced upfront payments/down payments and installment payments.[44]

84. *Rural Telephone Companies.* Consistent with Congress' specific inclusion of rural telephone companies among the designated entities in section 309(j)(4)(D), we seek comment on whether we should adopt bidding credits or other tools to ensure meaningful participation in the provision of broadcast services by rural telephone companies.

85. *Small Businesses.* Our experience has been that most applicants for new broadcast stations are small businesses. Nevertheless, we seek comment on whether we should adopt bidding credits or other tools to ensure the participation of small businesses in

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[43] Congress repealed, as of January 17, 1995, that portion of section 1071 of the Internal Revenue Code, 26 U.S.C. § 1071, under which the Commission administered the tax certificate program. See Self-Employed Health Insurance Act, H.R. 831, § 2(d).

[44] See generally The FCC Report to Congress on Spectrum Auctions, FCC 97-353.

the provision of these services. Commenters should address whether considerations regarding small businesses may differ for future auctions than auctions involving pending cases. We also seek comment on how we should define small business for any special provisions we may adopt. Specifically, in our Part 1 Rule Making, we note that, in various services, we have adopted small business size standards based on gross revenues ceilings of $3 million, $15 million, or $40 million.[45] We seek comment on which of these size categories for small businesses utilized in our prior auctions is most applicable for the broadcast services, or whether an alternative size standard would be more appropriate. As provided in 47 C.F.R. § 1.2110(b)(1), the definition of small business should take into consideration the characteristics and the capital requirements of providing broadcast service to the public and the requirements set forth in the Small Business Act.[46]

86. *Minorities.* The Commission has had a longstanding commitment to encouraging minority participation in the broadcast industry. As the Commission explained in 1978:

> [W]e are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.[47]

We continue to be very concerned about the underpresentation of minorities as owners of broadcast stations and the implications for program diversity. Indeed, the minority ownership of broadcast stations has recently declined from 3.07 percent in 1995 to 2.81 percent in 1996-

[45] See Part 1 NPRM, 12 FCC Rcd at 5699 ¶ 19. In addition, for the broadband PCS C and F block auctions, we established size standards for "entrepreneurs" qualifying for installment payments and eligibility to bid. Specifically, we established a $75 million gross revenues standard for determining eligibility for installment payment plans, 47 C.F.R. § 24.711(b), and a $125 million gross revenues threshold, plus a $500 million total asset test, for determining entrepreneurs' block eligibility, 47 C.F.R. § 24.709(a).

[46] See also Part 1 NPRM, 12 FCC Rcd at 5700 ¶ 21, proposing that size standards adopted in the future be expressed in terms of gross revenues "not to exceed" particular amounts, and that existing standards be modified to conform to this standard, and that, consistent with the Small Business Act, 15 U.S.C. § 632(a), such standards be based on the applicant's average gross revenues over the preceding three years.

[47] Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 980-81 (1978) (footnote omitted). See generally Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 570-71 (1990), and the citations therein.

97.[48]

87. In Metro, applying an intermediate scrutiny standard, the Supreme Court upheld the constitutionality of our treatment of minority ownership policies in comparative proceedings. Specifically, the Court identified broadcast diversity as an important governmental objective, 497 U.S. at 567, determined that our minority ownership policies were substantially related to achieving that objective, id. at 566, and attached "great weight" to the joint determination of Congress and the Commission that "the minority ownership policies are critical means of promoting broadcast diversity." Id. at 578. We recognize that in Adarand the Supreme Court subsequently established that policies that take race into account are reviewed under a strict (as opposed to intermediate) scrutiny standard.[49] We tentatively conclude that, to the extent that it complies with applicable constitutional standards, we should take steps to further our longstanding goal of increasing minority ownership of broadcast stations, as well as implementing the designated entity provisions of section 309(j)(4) of the Act. We ask for comment on how we can develop our policies, consistent with the standards set forth in Adarand. In particular, we ask for comment on what tools, such as bidding credits or others, might be used consistent with Adarand. In addition, we seek comment on whether we should limit any tools designed to increase minority ownership to those minority-owned businesses that are also small businesses.

88. *Minority Eligibility Standards:* If we adopt bidding credits or other special tools designed to further minority participation, we will need to develop eligibility criteria that will ensure that the scope of our program is appropriate. In this regard, we seek comment on what standards we might employ to specifically further our goal. We could, for example, specify that to qualify for any minority-based provisions, an applicant must be minority-controlled (i.e., minorities must have de facto as well as de jure control of the applicant and must own more than 50 percent of the equity on a fully diluted basis) and meet the eligibility requirements set forth in 47 C.F.R. § 1.2110(b)(2).[50] Additionally, to ensure that any minority

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[48]NTIA Annual Report, "Minority Commercial Broadcast Ownership in the United States" (August 1997).

[49]Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995).

[50]Section 1.2110(b)(2) requires that minority owners must have a controlling interest in the applicant, must own on a fully diluted basis 50.1 percent of the equity, and in the case of corporate applicants, must hold at least 50.1 percent of the voting stock or in the case of partnerships, all general partners must be minorities (or entities 100 percent owned or controlled by minorities), and minorities must collectively own at least 50.1 percent of the partnership equity. We note here that the Office of Management and Budget recently modified Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, see 62 Fed. Reg. 58782 (October 30, 1997), from which our definition of "minority" set forth in Section 1.2110(b)(2) is derived. See Part 1 Order, 12 FCC Rcd at 5697 ¶ 15 & n.38. In that regard, we anticipate that the operative definition of "minority" at the time of the auctions proposed in this item will be that provided by 47 C.F.R. § 1.2110(b)(2) at the time the auction occurs.

policies are reserved for businesses in which minorities have a substantial financial stake, as well as de jure and de facto control, we could strictly define equity to require that minorities have the right to receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock and the right to receive dividends, profits, and other distributions from the business in proportion to their equity interests.[51] This would be similar to the eligibility standards for minority owned businesses adopted but never implemented for the broadband PCS auctions. Another alternative might be to adopt the "controlling principal" test for financial attribution that we have proposed in the Part 1 Rule Making, 12 FCC Rcd at 5702-03 ¶¶ 25-28, for all auctionable services.[52]

89. We also seek comment on whether we should attribute fully any options or conversion rights held by non-minorities absent a demonstration that the decision to exercise the option or conversion rights is beyond the control of the ostensibly passive non-minority owner. Similarly, we seek comment on whether we should attribute fully the interests of: (1) any individual or entity that played a significant role as a promoter in forming the applicant; and (2) any non-voting stockholder unless the corporate documents unequivocally require insulation of the non-voting stockholder from participation in the licensee's affairs to the same extent that a limited partner must be insulated. We ask for comments on our proposed definition of minority-owned businesses eligible for any minority policies. Are there any circumstances, for example, in which it would be appropriate to extend any minority policies to broadcast applicants in which minority group members hold less than 50.1 percent of the equity but retain 50.1 percent voting control?[53]

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[51] We note that these restrictions differ from the benchmarks used to attribute ownership of broadcast stations for purpose of our multiple ownership restrictions set forth in 47 C.F.R. § 73.3555, where the intent is to identify ownership interests in, or relationships to, a licensee potentially conferring the ability to influence or control the operations of a licensee, including core functions, such as programming. Notice of Proposed Rulemaking in MM Docket No. 94-150, et al. 10 FCC Rcd 3606, 3614 (1995); Attribution of Ownership Interests, 97 FCC 2d 997, 999, 1005 (1984), recon. 58 RR 2d 604 (1985), further recon. 1 FCC Rcd 802 (1986). For that purpose, ownership interests below 50% are attributed but nonvoting and other passive interests are generally disregarded. Our tentative view is that a more restrictive approach is warranted here to safeguard the integrity of our minority ownership policy by strictly limiting it to circumstances in which minority owners will have de facto and de jure control of the license.

[52] In the Part 1 Rule Making, 12 FCC Rcd at 5702-03 ¶¶ 25-28, the Commission proposed to use for financial attribution purposes the "controlling principal" test in place of the "control group" standard currently used in narrowband and broadband PCS. In this regard, we note the court's criticism in Bechtel II, 10 F.3d at 883, of the fact that comparative case law measures ownership for integration purposes in terms of voting share, rather than profit share.

[53] See Implementation of Section 309(j) of the Communications Act (Fifth Report and Order), 9 FCC Rcd 5532, 5611-13 ¶¶ 183, 185 (1994), recon. Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994), modified, Sixth Report and Order, 11 FCC Rcd 136 (1995), aff'd sub nom. Omnipoint v. FCC, 78 F.3d 620 (D.C.. Cir. 1996) (due to the "exceptionally great financial resources" required by broadband PCS applicants,

90. *Female Ownership:* We also ask for comments on whether special policies are warranted for female-owned applicants. We note that the constitutionality of our former practice of awarding comparative preferences for female ownership was not addressed by the Supreme Court in Metro and that we suspended that practice following Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992), which held that our gender preference was not shown to be substantially related to achieving program diversity and that it was thus unconstitutional. Additionally, the Supreme Court has ruled that a state program, which makes distinctions based upon gender, must be supported by an "exceedingly persuasive justification" in order to withstand constitutional muster. United States v.Virginia Military Institute, 116 S.Ct 2264, 2274-76 (1996). We seek comment on whether there is sufficient evidence to justify special provisions for women-owned businesses under that standard.

91. However, pursuant to our obligation under 47 U.S.C. § 257, we have commenced a comprehensive study to examine further the role of small businesses owned by women or minorities in the provision of telecommunications services and the impact of the Commission's policies on access to the industry for such businesses.[54] The record compiled in this study may provide "exceedingly persuasive justification" for special provisions for women-owned broadcast applicants in future auctions of licenses for new broadcast stations. Commenters advocating the adoption of such measures at this time should address the constitutional issue and present specific empirical evidence supporting their views. They should also focus on how women-owned businesses should be defined for this purpose, and on whether such preferential treatment should be identical to that accorded to minority-owned businesses.

92. *Diversification of Ownership.* We also seek comment on whether we should adopt bidding credits or other measures to promote diversification of ownership. As noted above, diversification of ownership is one of the two primary objectives of our current licensing system. Are our multiple ownership rules sufficient to promote diversification, or are additional measures warranted given our tentative conclusion to use auctions to resolve mutual exclusivity among pending commercial broadcast applications that are subject to section 309(l) and Congress' direction that we must do so for all other pending and virtually all future commercial broadcast applications? We note, moreover, that in the absence of such measures, group owners may, as a result of economies of scale, have a significant

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they qualify for preferential treatment so long as minorities hold 25 percent of the equity and 50.1 percent of the voting stock, provided no single investor holds 25 percent of the corporation's passive equity). The favorable bidding credits originally intended to enhance the opportunities of minority- and female-owned small businesses were never implemented. In Omnipoint the court upheld our decision in the Sixth Report and Order to make these credits available to small businesses following Adarand.

[54]See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Report), FCC 97-164 (rel. May 8, 1997).

advantage in an auction over newcomers not owning any broadcast stations. We thus ask for comment on whether we should adopt some measure in the competitive bidding process that is specifically designed to promote diversification of ownership. We also urge commenters to think creatively about how we might promote diversification of ownership through the competitive bidding process. Would it be appropriate, for example, to devise an asset or revenue test that would determine eligibility for such credit? Should we strictly limit any such credit to applicants having no other media interests, or alternatively, should we follow our case law in comparative proceedings and distinguish among applicants based on the extent and location of any media interests? In the event we adopt bidding credits how should they be calculated? Should the credits be tiered based upon the number, size, and location of any media interests, with the highest credits awarded to applicants with no media interests, lesser credits to applicants with a single media interest outside the local market, and the least credits to applicants with multiple distant media interests or a single media interest within the service area? In addition, should we place special restrictions on the transferability of licenses awarded in this manner, in addition to the unjust enrichment provisions contained in Part 1 of the Commission's rules, so as to maximize the diversification impact of such measures?

93. *Bidding Credits.* To the extent we adopt any bidding credits for rural telephone companies, small businesses, minorities, women, non-group owners or others, we ask for comment on what those credits should be and whether, and to what extent, any such bidding credits should be tiered, as we have done in other auction contexts.[55]

94. *Unjust Enrichment* We have a statutory obligation to prescribe rules to "prevent unjust enrichment as a result of the methods employed to issue licenses and permits." 47 U.S.C. § 309(j)(4)(E). To implement that provision and to ensure that any bidding credits have the intended effect of giving eligible designated entities the opportunity to participate in the provision of spectrum-based services, Commission rules generally exact a monetary penalty equal to the sum of the amount of the bidding credit plus interest if the licensee seeks to transfer the license to an entity ineligible for the bidding credit under the rules in effect at the time the license was awarded, or proposes to take any other action involving ownership or control that results in the loss of its status as a designated entity. See generally 47 C.F.R. § 1.2111. How long the transferor must hold the station in order to avoid the penalty varies under service-specific rules. We tentatively believe that, if we adopt any special provisions

[55]See, e.g., Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Radio Service Spectrum Cap (Report and Order) 11 FCC Rcd 7824, 7848-49 ¶ 53 (1996) (15 percent bidding credit for very small businesses and 10 percent bidding credit for small businesses); Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool (Second Order on Reconsideration and Seventh Report and Order), 11 FCC Rcd 2639, 2705-06 ¶ 164 (1995) (15 percent bidding credit for very small businesses and 10 percent bidding credit for small businesses).

for designated entities, similar measures are warranted here, given our experience with the comparative hearing process, particularly its tendency to foster ownership combinations formed primarily to secure a broadcast license, and the court's admonitions in Bechtel II concerning the arbitrariness of licensing decisions based on ephemeral considerations.

95. Specifically, we propose to require that, for a period of five years following Program Test Authority, broadcast licensees granted a new license through any designated entity or diversification bidding credits or other special provision must certify annually their continuing eligibility for such credit or provision, under the rules in effect at the time the license was awarded, and report within 30 days any change affecting such eligibility. We seek comment on whether the five-year period is appropriate to preserve the efficacy of a licensing system designed to disseminate licenses among a wide variety of licensees, and to fulfill our congressionally mandated obligation to prevent unjust enrichment. And, as a condition for Commission approval for the transfer or assignment of the license to an entity ineligible for the bidding credit or other special provision obtained by the licensee, or for other ownership changes rendering the licensee ineligible for a previously awarded bidding credit or other provision during that five-year period, we tentatively propose to require a monetary reimbursement to the Treasury for the previously awarded bidding credit. Alternatively, we seek comment on granting a one-time bidding credit, requiring that party to hold the license for five years, but allowing the licensee to bid (without credits) for additional licenses during the holding period.

96. We seek comment on how to calculate the unjust enrichment payment. Should we adhere to the current rule requiring reimbursement of the amount of the bidding credit plus interest, or should we adopt an unjust enrichment provision that provides a scale of decreasing liability based on the number of years a license has been held as proposed in our Part 1 Rule Making?[56] In any event, if we adopt tiered bidding credits, we propose to require reimbursement of any differential that results from the sale or transfer between parties that qualify for varying size credits. We seek comment on whether there are any mitigating circumstances that would justify excusing altogether or reducing the unjust enrichment payment. Finally, we seek comment on what measures other than monetary penalties and reporting requirements may be appropriate to ensure that eligible entities retain their ownership and control status? Is a monetary penalty sufficient to ensure the integrity of the competitive bidding process or should other enforcement actions, such as short term renewals, forfeitures, or revocation proceedings, also be considered?

97. We also note the special disclosure requirements, set forth in section 1.2111(a), which apply to all post-auction transfers of stations held less than three years, regardless of whether the transferor received a bidding credit or other special consideration, and which were

[56] See Part 1 NPRM, 12 FCC Rcd at 5713 ¶ 43.

intended to solicit the data necessary to evaluate our competitive bidding systems generally. But we ask whether special transfer disclosure requirements or unjust enrichment provisions are appropriate where a licensee that did not receive any preferential treatment in the competitive bidding process seeks to assign or transfer the license prior to construction.

D. Auction Authority for Instructional Television Fixed Service

98. The Instructional Television Fixed Service (ITFS) is a point-to-point microwave service whose channels are allocated to educational organizations and used primarily for the transmission of instructional, cultural and other types of educational material. Although Section 309(j) of the Communications Act, as amended by the 1997 Balanced Budget Act, specifically exempts noncommercial educational and public *broadcast* stations from the Commission's competitive bidding authority, that section does not specifically exempt ITFS stations from our competitive bidding authority. *See* 47 U.S.C. § 309(j)(2). We therefore request comment on the applicability of the Commission's competitive bidding authority to mutually exclusive applications for ITFS stations.

99. As provided in 1993, the Commission's initial auction authority limited us to utilizing competitive bidding only for services where licensees received compensation in exchange for providing transmission or reception capabilities to subscribers. Accordingly, in our initial auction order, we excluded from the competitive bidding process "the broadcast television (VHF, UHF, LPTV) and broadcast radio (AM and FM) as well as the ITFS services." Second Report and Order, supra, n.5, 9 FCC Rcd at 2352. Although there is an express exemption from the requirement that the Commission use competitive bidding procedures to award licenses if mutually exclusive applications are accepted for noncommercial educational and public broadcast stations, as defined in Section 397(6) of the Communications Act, there is no exemption for ITFS, which is not a broadcast service. Also, the conference report accompanying the Balanced Budget Act, although referring to the broadcast and secondary broadcast services, makes no reference to ITFS.

100. Given the express terms of the amended Section 309(j), we ask for comment on whether we must, and if not, whether we should, apply competitive bidding to mutually exclusive ITFS applications. We note in this regard that ITFS, although a point-to-point microwave service, has certain characteristics in common with the noncommercial educational and public broadcast stations which are specifically exempted from our Section 309(j) auction authority. For example, the ITFS spectrum is specifically reserved for educational usage.[57]

[57] To spur the development of ITFS, we have, however, allowed ITFS licensees to lease the excess capacity on their channels to Multipoint Distribution Service (MDS) operators, which have generally used such excess capacity to transmit multichannel video programming to subscribers. These lease arrangements have proved mutually beneficial, allowing MDS operators access to additional channels needed to compete more effectively

Noncommercial educational broadcast stations are also statutorily exempt from payment of application processing fees. Due to the nature of the ITFS service, the Commission afforded ITFS applicants a similar exemption from such fees. We accordingly seek comment in this *Notice* on all issues relating to our statutory authority to auction mutually exclusive ITFS applications and on the appropriateness of so doing, if the Commission has any discretion in the matter. If we conclude that we must, or, if we have discretion that we should, auction mutually exclusive ITFS applications, we tentatively propose to apply the general auction rules adopted in this proceeding for broadcast applications to ITFS applications as well. We seek comment on this proposal.

E. Proposals for Pending Broadcast Comparative Renewal Proceedings

101. In our NPRM, 7 FCC Rcd at 2671 n.1, we indicated that we were not attempting to address the distinct issues raised by comparative renewal proceedings. Two commenters in this proceeding asserted that the Commission should not apply the comparative criteria developed here to comparative renewal proceedings.[58] In connection with its implementation of the Telecommunications Act of 1996, which eliminates comparative renewal proceedings with respect to renewal applications filed after May 1, 1995, see 47 U.S.C. § 309(k), the Commission has terminated its comparative renewal rulemaking proceeding. Implementation of Sections 204(a) and 204(c) of the Telecommunications Act (Broadcast License Renewal Procedures), 11 FCC Rcd 6363, 6364 ¶ 7 (1995). We believe that auctions are not a legally available option in pending comparative renewal proceedings. Our expanded authority to conduct competitive bidding procedures pursuant to section 309(j), as amended by section 3002(a) of the Balanced Budget Act of 1997, is expressly limited to "applications for initial licenses or construction permits," a restriction that precludes the use of competitive bidding procedures for renewal license applications.[59] Nothing in the Balanced Budget Act or the Conference Report indicates that Congress intended otherwise. Thus, for the few pending comparative renewal proceedings subject to the comparative freeze, we believe we lack authority to conduct a competitive bidding procedure pursuant to section 309(j). (As of September 30, 1997 there were eight such cases.)

102. If we decide to do auctions for the pending cases involving applications for new

in the multichannel video programming market, and providing ITFS applicants and licensees (including small rural school systems) with a source of funding and technical expertise to increase their utilization of available ITFS channels.

[58]NAB at 2-5; NBC at 3-4.

[59]Implementation of Section 309(j) of the Communications Act -- Competitive Bidding (NPRM), 8 FCC Rcd 7635, 7638 ¶ 22 (1993), citing H.R. Rep. 111, 103d Cong. 1st Sess. 253 (1993).

commercial broadcast stations that are subject to section 309(l) and if comparative renewal cases in which the comparative issue is decisionally significant do not settle,[60] we propose to lift the comparative freeze and to adjudicate them using a two-step procedure, described below. Particularly in light of the statutory change eliminating comparative proceedings for renewal applications filed after May 1, 1995, if we do not use comparative criteria for the section 309(l) cases, we tentatively believe that it would not be a meaningful or efficient use of our administrative resources to undertake the further rulemaking proceedings necessary to develop comparative criteria that would then be used to resolve only the few pending comparative renewal proceedings. Instead, if these circumstances develop, we propose to adopt for these cases the two-step renewal procedure we developed for comparative cellular renewal proceedings. Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, 8 FCC Rcd 2834 (1993), recon. denied, 8 FCC Rcd 6288 (1993) (Cellular Order). Under that approach, we would grant the renewal application without a comparative hearing if we determined in a threshold hearing that the renewal applicant deserved a renewal expectancy for "substantial" performance during the license term.[61] Commenters should address whether such a two-step approach, which would be analogous to the procedures for new renewal cases set forth in section 309(k), is judicially sustainable. In this regard, we note our analysis in the Cellular Order, 8 FCC Rcd at 2836 ¶ 12, that the court could be persuaded to overrule Citizens Communications v. FCC, 447 F.2d 1201 (D.C. Cir. 1971), clarified, 463 F.2d 822 (D.C. Cir. 1972), in which it held that a similar two-step procedure developed for comparative broadcast renewal proceedings was contrary to the hearing requirements set forth in section 309 of the Act.

103. We also ask for comment on whether, as an alternative to the two-step procedure, or in conjunction with the two-step hearing that reaches the second stage, we should consider any comparative factors raised by the applicants on a case-by-case basis. To the extent any commenters advocate the development in advance of specific comparative criteria that would be used only to decide comparative cases involving renewal applications filed before May 1, 1995, they should make concrete proposals for a competitive, meaningful and workable system for doing so. They should keep in mind the need for persuasive evidence demonstrating the public interest significance of any proposed criteria, for an administratively workable system for implementing it, and for effective mechanisms to

[60] Following the enactment of section 204(a) repealing a challenger's right to file a competing application for new facilities against an incumbent licensee's renewal application for renewal applications filed after May 1, 1995, the Commission indicated a willingness to waive the limit on settlement payments in comparative renewal proceedings, where the circumstances indicated that the competing application was not filed for speculative or other improper purpose. EZ Communications, Inc., 12 FCC Rcd 3307 (1997).

[61] See Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503, 509 (D.C. Cir. 1982), cert denied, 460 U.S. 1084 (1983).

monitor licensee adherence to comparative commitments.

IV. PROCEDURAL MATTERS

A. Ex Parte Rules -- Permit-but-disclose proceeding

104. This is a permit-but-disclose notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed, as specified in the Commission's rules.

B. Regulatory Flexibility Act

105. An Initial Regulatory Flexibility Act Analysis for the Notice of Proposed Rulemaking is set forth in Appendix B.

C. Authority

106. Authority for this rulemaking is contained in 47 U.S.C. §§ 154(i), 154(j), 303(r), 309(g), 309(i), 309(j), 309(l), 403.

D. Paperwork Reduction Act

107. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

V. ORDERING CLAUSES

108. ACCORDINGLY, IT IS ORDERED, That NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

109. IT IS FURTHER ORDERED, That pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments SHALL BE FILED on or before **[45 days after Federal Register Publication]** and reply comments SHALL BE FILED on or before **[65 days after Federal Register Publication]**. To file formally in this proceeding, commenters must file an original and four copies of all comments, reply comments, and supporting documents filed in this rulemaking proceeding. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. In addition, commenters should file copies of any such pleadings with the Mass Media Bureau, Video Services Division, Room 702, and Audio Services Division, Room 302, 1919 M St., N.W., Washington, D.C. 20554, and with the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M St., N.W., Washington, D.C. 20554.

110. IT IS FURTHER ORDERED, That written comments by the public on the proposed and/or modified information collections are due **[insert the same day as comments on the NPRM]**. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before **[insert 60 days after date of publication in the Federal Register]**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

111. IT IS FURTHER ORDERED, That, effective upon the close of business on the date of release of this Notice of Proposed Rulemaking, the Commission WILL NOT ACCEPT applications for construction permits or for major changes to existing facilities in any commercial broadcast or secondary broadcast service. However, the Commission WILL ACCEPT applications timely filed in response to an outstanding cut-off list or an open filing window.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

I. GC Docket No. 92-52

The following comments were filed in response to the NPRM in GC Docket No. 92-52:

1. American Women in Radio and Television, Inc.;
2. Arnold Broadcasting Company;
3. The Association of America's Public Television Stations and National Public Radio (APTS/NPR);
4. John W. Barger;
5. Susan M. Bechtel;
6. Black Citizens for a Fair Media et al.;[1]
7. Capital Cities/ABC, Inc. (Cap Cities);
8. CBS, Inc.;
9. Lauren A. Colby, Esquire;
10. [Larry G. Fuss d/b/a] Contemporary Communications;
11. Carol Cutting;
12. du Treil, Lundin & Rackley, Inc.;[2]
13. Monica Dawn Edelstein;
14. The Federal Communications Bar Association (FCBA);
15. Galaxy Communications, Inc.;
16. The Georgia Public Telecommunications Commission;
17. James J. Henderson;
18. Herrin Broadcasting, Inc.;
19. Eric R. Hilding;
20. Judy Yep Hughes;
21. Lisa M. Jenkins;
22. James E. Martin, Jr. et al.;[3]

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[1] Black Citizens for A Fair Media, Media Access Project, National Association for Better Broadcasting, Philadelphia Lesbian and Gay Task Force, Telecommunications Research and Action Center, DC Chapter of the National Association of Puerto Rican Women, and the Office of Communication of the United Church of Christ.

[2] In addition to du Treil's comments filed in this proceeding, we have considered comments that du Treil filed in MM Docket No. 91-347, which we consider more relevant to this proceeding than to the other proceeding. See Amendment of Part 73 of the Commission's Rules, 7 FCC Rcd 5074, 5077 n.18 (1992).

[3] James E. Martin, Jr., InterMart Broadcasting Gulf Coast, Inc., InterMart Broadcasting of Palm Beach, Inc., and Emision de Radio Balmaseda, Inc.

23. The National Association for the Advancement of Colored People and the League of United Latin American Citizens (NAACP);
24. The National Association of Broadcasters (NAB);
25. National Broadcasting Company, Inc. (NBC);
26. The National Federation of Community Broadcasters (NFCB);
27. NCE Licensees;[4]
28. Playa Del Sol Broadcasters, Inc.;
29. Harry M. Plotkin;
30. Jeffrey Rochlis;
31. Skyland Broadcasting Company;
32. Sunrise Broadcasting Corp.;
33. United States Catholic Conference;
34. Valley Public Television, Inc.;
35. John J. Wheeling ;
36. Women in Communications, Inc. et al.[5]

The following reply comments were filed in response to the NPRM in GC Docket No. 92-52:

1. Anchor Broadcasting Limited Partnership;
2. The Association of America's Public Television Stations and National Public Radio (APTS/NPR);
3. Entertainment Communications, Inc. (Entercom);
4. The National Association of Black Owned Broadcasters, Inc. (NABOB);
5. The National Association for the Advancement of Colored People and the League of United Latin American Citizens (NAACP);
6. Jeffrey Rochlis;
7. Michael J. Wilhelm;
8. National Federation of Community Broadcasters;
9. Media Access Project and Telecommunications Research and Action Center.

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[4] Arizona Board of Regents for the Benefit of the University of Arizona, Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Central Michigan University, Columbia College, Iowa Public Broadcasting Board, Kent State University, KVIE, Inc., Nevada Public Radio Corporation, the Ohio State University, State of Wisconsin-Educational Communications Board, and WAMC.

[5] Women in Communications, Inc., National Women's Law Center, NOW Legal Defense and Education Fund, Philadelphia Lesbian and Gay Task Force, Women's Bar Association of D.C., Women's Institute for Freedom of the Press, Women's Media Project of the Communications Consortium Media Center, and the Feminist Majority Foundation.

The following comments were filed in response to the FNPRM in GC Docket No. 92-52:

1. American Women in Radio and Television, Inc.;
2. August Communications Group, Inc. and John W. Barger;
3. Black Citizens for a Fair Media et al.;
4. du Treil, Lundin & Rackley, Inc.;
5. The Federal Communciations Bar Association (FCBA);
6. The National Association of Broadcasters;
7. Susan M. Bechtel;
8. National Public Radio and America's Public Television Stations (NPR/APTS);
9. New Miami Latino Broadcasting Corp.;
10. New Paltz Broadcasting, Inc.;
11. Reed Smith Shaw & McClay;
12. Rex Broadcasting Corp.;
13. Todd Robinson;
14. Marc C. Scott Communications, Inc.;
15. Tucker Broadcasting Corp., Limited Partnership;
16. United States Catholic Conference (USCC)

The following reply comments were filed in response to the FNPRM in GC Docket No. 92-52:

1. Susan M. Bechtel;
2. Black Citizens for a Fair Media et al.;
3. Evergreen Communications Co.;
4. Greater Greenwood Broadcasting Limited Partnership;
5. The National Association of Broadcasters;
6. Reed Smith Shaw & McClay;
7. Kin Shaw Wong and Hispanic Broadcasting, Inc.;
8. Rex Broadcasting;
9. August Communications;
10. Elinor G. Stephens

The following comments were filed in response to the SFNPRM in GC Docket No.92-52:

1. Art Moore, Inc.;
2. The Association of America's Public Television Stations and National Public Radio (APTS/NPR);
3. Bechtel & Cole, Chartered;
4. Black Citizens for a Fair Media et al.;
5. Breeze Broadcasting Company;
6. Amador S. Bustos;
7. Caldwell Broadcasting Limited Partnership;